

DOG HEARING MOTION

SELECT BOARD MEETING

January 12, 2009

Pursuant to the provision of MGL Chapter 140, Section 157, and the Town of Amherst Animal Bylaw, the town of Amherst, through its Town Manager as authorized by the Select Board, conducted a dog complaint hearing on December 11, 2008. Eight (8) exhibits, which are incorporated into this decision by reference, were presented. A memoranda dated December 12, 2008, incorporated into this decision by reference, summarizes detailed facts relative to three dog complaints of bites on July 1, 2006, November 18, 2006, and September 12, 2008 by a spayed female mixed-breed dog named "Leah" owned by Karen Eddings of 84 Blackberry Lane in Amherst. On January 5, 2009, the Select Board found that the dog "Leah" creates a nuisance to the community by biting, and endangers the safety of Town residents, and the Select Board ordered that Karen Eddings comply with the set of stipulations she signed January 5, 2009, incorporated into this decision by reference, violation of which will result in "Leah's" immediate remand to the custody of the Amherst Animal Welfare officer for either relocation outside the Town of Amherst or euthanasia. Karen Eddings may appeal the January 5, 2009 decision to the District Court within ten days pursuant to MGL Chapter 140, Section 157.

Town of



AMHERST Massachusetts

Amherst Police Department
111 Main Street
Amherst, Massachusetts
01002

RECEIVED OCT 01 2008

Charles L. Scherpa
Chief of Police
Business (413) 259-3000
Chief (413) 259-3014
Records (413) 259-3016
Fax (413) 259-2408
police@amherstma.gov

September 30, 2008

TO: Larry Shaffer, Town Manager

FROM: Charles L. Scherpa, Chief of Police

SUBJECT: Leah -Female German Shepherd Mix
Owned by Karen Eddings of 84 Blackberry Lane, Amherst, MA

Subject to the attached incident reports, I request a hearing before the Select Board be scheduled to banish the above referenced dog from the Town of Amherst.

Charles L. Scherpa
Chief of Police

Attachments

cc: Carol A. Hepburn, Animal Welfare Officer
Karen Eddings, 84 Blackberry Lane, Amherst, MA



Amherst Police Department
Incident Report

Page: 1
09/30/2008

Incident #: 08-575-OF
Call #: 08-17265

Date/Time Reported: 09/15/2008 0759
Report Date/Time: 09/22/2008 1501
Status: No Crime Involved
Involves: Juveniles
Reporting Officer: Civilian Hepburn Carol

Signature: _____

INVOLVED	SEX	RACE	AGE	SSN	PHONE
EDDINGS, KAREN 84 BLACKBERRY LN AMHERST MA 01002-1545	F	W	55	111-44-9273	413-230-3446
BODY: NOT AVAIL. COMPLEXION: NOT AVAIL. DOB: 04/10/1953 PLACE OF BIRTH: NOT AVAIL. LICENSE NUMBER: MA 111449273 ETHNICITY: NOT HISPANIC					

[CONTACT INFORMATION]

Home Phone (Primary) 413-230-3446

EMPLOYER/SCHOOL: SELF EMPLOYED YOGA INST.

EVENTS(S)

LOCATION TYPE: Residence/Home/Apt./Condo Zone: North Sector
154 GRANTWOOD DR
AMHERST MA 01002

DOG BITE

VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
CONNELLY, ADDIE 154 GRANTWOOD DR AMHERST MA 01002 DOB: 12/01/2000 INJURIES: Apparent Minor Injury ETHNICITY: Unknown RESIDENT STATUS: Resident TAKEN TO: COOLEY DICKINSON HOSPITAL TAKEN BY: Other VICTIM CONNECTED TO OFFENSE NUMBER(S): 1 CONTACT INFORMATION: Home Phone (Primary) 413-230-3422	F	W	7	NOT AVAIL	413-230-3422

NARRATIVE FOR CIVILIAN HEPBURN CAROL

Ref: 08-575-OF

Entered: 09/22/2008 @ 1513

Entry ID: 423

Modified: 09/29/2008 @ 1226

Modified ID: 423

On 9/12/08 at approximately 1730 while riding her bike near 84 Blackberry Ln., Addie CONNELLY came across a dog held on a leash. The dog is owned by Karen EDDINGS of 84 Blackberry Ln. CONNELLY related to me ID 423 that EDDINGS had both of her dogs with her on leashes, and when CONNELLY came nearer to them EDDINGS told her to stay away from the dog, because it was a bad dog and did not like bike wheels. CONNELLY then turned away from the dog (still on her bike) and at this point EDDINGS dog came to the end of its leash and bit CONNELLY on right leg above the ankle. At this point CONNELLY rode her bike home and told her Mother (RACHEL) what had happened. RACHEL went to EDDINGS home and confronted her about this incident. After speaking to EDDINGS she drove her daughter to the Emergency room at the Cooley Dickinson Hospital where she was treated for lacerations and a small puncture wound. CONNELLY'S wound required no sutures and was treated and bandaged and she was sent home with info on how to follow-up the treatments to heal it.

EDDINGS version of this incident was in line with CONNELLY'S except that EDDINGS related to me that she had warned CONNELLY several times not to approach the dog while she was holding it on a leash. When CONNELLY went to turn her bike away to leave, she came too close to the dog who was at the end of the leash when the dog bit CONNELLY.

EDDINGS was advised that the dog had two previous encounters with people on bikes and roller blades. At the time of the second bite EDDINGS was warned that she would be fined and could face a possible hearing before the Select Board. The dog is up to date on all its shots. EDDINGS was given a 10 day quarantine notice and denied. EDDINGS must keep her dog on a shorter leash, be muzzled at all times and not walk her dog anywhere in the surrounding neighborhood, or near children on bikes, roller blades or anything with wheels. EDDINGS is trying to find a more suitable home at this time for her dog. Any further incidents will result in the possibility of having the dog euthanized. EDDINGS was also made aware that she would be responsible for any and all medical bills that arise or will occur as a result of this bite.

Rachel CONNELLY (Mother of Addie) was informed of my finding and at this point is satisfied. ok 423

Related to this incident I ID 423 received a voice message on 9/23/08 at approx. 1745 from Rachel CONNELLY (Addie's Mother) who informed me that while she was out walking in the neighborhood, she came across EDDINGS walking her dog. Although she did have it on a leash and had a muzzle on, CONNELLY was concerned because I ID 423 had passed on information to her than I had advised EDDINGS not to walk her dog in the neighborhood. CONNELLY was concerned that even if the dog had a muzzle on, it still could knock down someone on a bike and cause injury that way. I assured CONNELLY that I would contact EDDINGS and get to the bottom of this issue as soon as possible. This case will remain open until such time it can be resolved. ok 423

Related to this incident I ID 423 on 9-28-08 at approx. 1530hrs received yet another phone call from CONNELLY (Mother of Addie). CONNELLY informed me that her Son was riding his bicycle and saw EDDINGS dog outside in the Street by her house. At approx. 1545hrs I ID 423 called EDDINGS to hear her side of this story. EDDINGS related to me that she had taken her dog for a walk on Mt. Hermon and had just gotten home and while taking her dog from the car to go back inside, she spotted CONNELLY'S Daughter (Addie) not far from riding by outside her house. At this point I recalled CONNELLY and relayed this information to her. I could hear her speaking to her Son in the background, asking him if he was sure the dog was in the street and not in his yard, to which I heard him say he wasn't sure. CONNELLY was given the option of meeting with EDDINGS and myself to see if we could have resolve with this issue, or have a hearing before the Chief of Police, and if not this is not amenable that a hearing before the Select Board will be the next step.



Amherst Police Department
Incident Report

Page: 1
09/17/2008

Incident #: 06-751-OF
Call #: 06-20508

Date/Time Reported: 11/20/2006 1307
Report Date/Time: 11/20/2006 1342
Occurred Between: 11/18/2006 1200-11/18/2006 1205
Status: No Crime Involved
Reporting Officer: Patrolman Sabino Epiceno
Approving Officer: Sergeant Jerry Millar

Signature: _____

INVOLVED	SEX	RACE	AGE	SSN	PHONE
EDDINGS, KAREN LEE 84 BLACKBERRY LN AMHERST MA 01002	F	W	53	111-44-9273	413-519-2375
BODY: NOT AVAIL.		COMPLEXION: NOT AVAIL.			
DOB: 04/10/1953		PLACE OF BIRTH: NOT AVAIL.			
LICENSE NUMBER: MA 111449273		ETHNICITY: NOT HISPANIC			

EVENTS(S)

LOCATION TYPE: Highway/Road/Alley/Street Zone: North Sector
GRANTWOOD/BLACKBERRY
40 GRANTWOOD DR
AMHERST MA 01002

DOG BITE

VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
ROTHENBERG, DAVID J 135 IDUNA LN AMHERST MA 01002 DOB: 05/10/1950 INJURIES: Apparent Minor Injury ETHNICITY: Not of Hispanic Origin RESIDENT STATUS: Resident VICTIM CONNECTED TO OFFENSE NUMBER(S): 1	M	W	56	NOT AVAIL	413-253-4747

SUPPLEMENTAL NARRATIVE FOR ANIMAL WELFARE OFFICER CAROL A HE

Ref: 06-751-OF

Entered: 12/01/2006 @ 1043
Modified: 12/01/2006 @ 1043Entry ID: 423
Modified ID: 423

ID 423 as a follow up to this report spoke to Karen EDDINGS concerning her dog being involved in this most recent dog bite. EDDINGS dog (a Female German Shepard Mix named Leah) has a history of biting see ID 06-393, EDDINGS dog seems to have a problem with anyone riding by on wheels. Several neighbors have called anonymously to voice there concerns about EDDINGS dog, and it seems that several incidents have gone unreported. I ID 423 advised EDDINGS that her dog would be quarantine and that her dog must have a muzzle at all times when out of her home while living here in the Town of Amherst.

After a long conversation with EDDINGS concerning the problem her dog has, I ID423 advised her that it would be best to try to find a home someplace where the neighborhood was more quiet and didn't have as many children. EDDINGS has tried to adopt Leah but has found it hard since she has bitten before. Shelter's that will take the dog will not guarantee that she will not be euthanized.. EDDINGS was advised that perhaps this would be the only resort to this issue.

EDDINGS was told that any further incidents involving her dog would result in a fine a hearing before the Select board which at this point I would have no choice but to recommend the dog be euthanized. ok 423

Amherst Police Department

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NARRATIVE FOR PATROLMAN SABINO S EPICENO

Ref: 06-751-OF

Entered: 11/20/2006 @ 1345 Entry ID: 34
Modified: 11/20/2006 @ 1420 Modified ID: 44
Approved: 11/20/2006 @ 1420 Approval ID: 44

On 11/20/06 Animal Control Officer Carol Hepburn asked me to start an investigation for a dog bite accident that occurred on 11/18/06 around noontime on Blackberry Ln near Sacco Dr. Ms Hepburn told me that a David Rothenberg has reported that he was bitten by a dog owned by Karen Eddings of 84 Blackberry Ln. The owner of the dog allegedly is a nurse and cleaned out the victims cut and bandaged it. I assume that the bite is in the victims leg as that he was riding his bike when the attack occurred.

Ms Hepburn wanted me to talk to the owner of the dog Ms Eddings and inform her that she needs to quarantine the dog in the house for 10 days. I did make contact with Ms Eddings over the phone and instructed her to keep the dog in the house for 10 days; and that she would have to walk the dog on a leash in her backyard when the dog needs to do his business. Ms Eddings agreed to do this. I also told her that Ms Hepburn will be by to see her next week monday on the 27th. That she will have with her a quarantine notice for the dog.

I also explain to Ms Eddings that Ms Hepburn will do the follow up invest in this matter. No further police action taken at this time.

I also called the Rothenberg home to get more info about the dog bite. No one answered the phone so a message was left on their voice mail.

NARRATIVE FOR PATROLMAN BRANDON M SEYMOUR

Ref: 06-393-OF

Entered: 07/03/2006 @ 0822 Entry ID: 94
Modified: 07/03/2006 @ 0822 Modified ID: 94
Approved: 07/30/2006 @ 2043 Approval ID: 75

On Saturday, July 1, 2006 at 1556 hours I (Officer Brandon Seymour) responded to 43 Blackberry Lane for reported dog bite. While en route, I was advised via dispatch that the reporting party and mother to the victim Marlene Musante reported her son Matthew had been bitten but did not require medical attention.

Upon my arrival, I was met at the door by Matthew Musante and his mother Marlene. Matthew lead me to the back stating he had been bitten but was not in pain with his mother confirming he did not require medical attention. Matthew exhibited the bite mark on the back of his left knee to me. I observed redness over an area size of a racquet ball, slight swelling and raising of the skin near the area of the bite, and three to four small picture wounds in a crescent shape consistent with the bite of a medium sized dog.

Matthew stated that shortly before I was dispatched, he was rolling blading on Blackberry Lane in the vicinity of #48 when a mixed lab, German Shepard in appearance, met him in the street and bit him in the back of left knee causing the injury observed. Mrs. Musante stated the dog, named Leah, resides at #48 and is owned by Karen Eddings. Mrs. Musante added she is on good terms with Mrs. Eddings and was hesitant to bring in police involvement but wanted the incident documented incase of future encounters. By this time, dispatch had confirmed that Leah's necessary vaccines were documented and current. I advised Mrs. Musante that I would return to the dog and speak with the owner to confirm the dog to be properly vaccinated. I further advised that our animal welfare officer may be following up on the incident.

I went to #48 Blackberry Lane approximately three houses away from #43 on the opposite side of the street. Upon exiting my cruiser I was met by Leah in the driveway. Leah was barking as she approached but greeted me affectionately and appeared calm/docile as did a second elderly Golden Lab.

I spoke with Leah's owner Mrs. Eddings who was greatly concerned over the bite as she was already aware of it. Mrs. Eddings stated Leah was a recently rescued dog removed from a neglected household. She stated she had been having problems with Leah barking but biting had never been an issue. Leah was confirmed through tags and her owner to have all of the necessary shots. Mrs. Eddings stated she was in the process of purchasing a muzzle and line for Leah who would remain indoors until further notice. Mrs. Eddings was advised that our animal welfare officer may follow up on the incident. No further police action necessary at this time.



Amherst Police Department
Incident Report

Page: 1
09/17/2008

Incident #: 06-393-OF
Call #: 06-11057

Date/Time Reported: 07/01/2006 1556
Report Date/Time: 07/03/2006 0803
Status: No Crime Involved
Involves: Juveniles
Reporting Officer: Detective Brandon Seymour
Assisting Officer: Civilian Hepburn Carol
Approving Officer: Sergeant Brian Daly

Signature: _____

EVENTS(S)

LOCATION TYPE: Residence/Home/Apt./Condo Zone: North Sector
43 BLACKBERRY LN
AMHERST MA 01002

DOG BITE

VICTIM(S)

	SEX	RACE	AGE	SSN	PHONE
MUSANTE, MATTHEW 43 BLACKBERRY LN AMHERST MA 01002 DOB: 03/14/1992 INJURIES: Apparent Minor Injury ETHNICITY: Not of Hispanic Origin RESIDENT STATUS: Resident VICTIM CONNECTED TO OFFENSE NUMBER(S): 1	M	W	14	NOT AVAIL	413-549-4752

PERSON(S)

	PERSON TYPE	SEX	RACE	AGE	SSN	PHONE
MUSANTE, MARLENE 43 BLACKBERRY LN AMHERST MA 01002 DOB: NOT AVAIL	PARENT	F	W	00	NOT AVAIL	
EDDINGS, KAREN L 84 BLACKBERRY LN AMHERST MA 01002 DOB: 04/10/1953	PARTICIPANT	F	W	53	111-44-9273	413-549-4042

KAREN EDDINGS
84 BLACKBERRY LANE
AMHERST, MA 01002

GREENFIELD SAVINGS BANK
400 Main Street - P.O. Box 1537 - Greenfield, MA 01302

PAY TO THE ORDER OF *Todd Collector*

FOR *fine*

AMOUNT *50.00*

DATE *10/07/08*

BRANCH *408*

ACCOUNT NUMBER *2218707991 15 00083925 0408*

**TOWN OF AMHERST NOTICE OF VIOLATION
OF TOWN BYLAW OR REGULATION**

9-16-08 **004104**

DATE OF THIS NOTICE *9-16-08*

NAME OF OFFENDER *KAREN EDDINGS*

ADDRESS OF OFFENDER *84 BLACKBERRY LANE*

CITY, STATE, ZIP CODE *AMHERST, MASS 01002*

DATE OF BIRTH OF OFFENDER *11/11*

DATE OF VIOLATION *7-12-08*

LOCATION OF VIOLATION *7-12-08*

SIGNATURE OF ENFORCING PERSON *[Signature]*

ENFORCING DEPARTMENT *AMHERST POLICE*

I HEREBY ACKNOWLEDGE RECEIPT OF THE FOREGOING CITATION.

☒ **Unable to obtain signature of offender. Date Mailed** *7-12-08*

☐ **Citation mailed to offender** *50.00*

THE FINE FOR THIS OFFENSE IS \$ *50.00*

YOU HAVE THE FOLLOWING ALTERNATIVES WITH REGARD TO DISPOSITION OF THIS MATTER:

(1) You may elect to pay the above fine, either by appearing in person between 8:00 A.M. and 4:30 P.M., Monday through Friday, legal holidays excepted, before the TOWN CLERK, 4 Boltwood Avenue, Amherst, MA 01002 OR by mailing a check, money order or postal note to the TOWN CLERK WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF THIS NOTICE. This will operate as a final disposition of the matter, with no resulting criminal record.

(2) If you desire to contest this matter in a non-criminal proceeding, you may do so by making a written request, and enclosing a copy of this citation within 21 days of the date of this notice to: CLERK-MAGISTRATE, NORTHAMPTON DISTRICT COURT, 15 Goshic Street, Northampton, MA 01060 Attn: 21D Non-Criminal Hearing.

(3) If you fail to pay the above fine or to appear as specified, a criminal complaint may be issued against you.

☒ **I HEREBY ELECT the first option above, confess to the offense charged, and enclose payment in the amount of \$** *50.00*

☐ **I HEREBY REQUEST a hearing on this matter.**

Signature *Karen Eddings*

OCT 07 2008

TRGP69

Amherst Animal Welfare Bylaw

SECTION 3. This bylaw shall be enforced by Town of Amherst Police Officers, Parking Enforcement Officers or the Disabilities Access Coordinator. This bylaw may be enforced through the non-criminal disposition method provided in Section 21D of Chapter 40 of the General Laws of the Commonwealth of Massachusetts. For purposes of non-criminal disposition, the enforcing persons shall be those town officials set forth in this section of the bylaw and the specific penalty shall be as provided in Section 2 of this bylaw.

SECTION 4. This bylaw shall be known and referred to as the "Handicapped Parking Bylaw".

ANIMAL WELFARE BYLAW (ATM – April 24, 2002 Art. 7)

Preamble

The animal welfare regulations are herein established for the purpose of promoting the health, safety, and general welfare of the Town of Amherst and its animals. This bylaw contains standards relating to the treatment, confinement and keeping of dogs; and cat regulations. The intent of this bylaw is to enhance the quality of life of citizens and animals in the Town of Amherst, and to protect the general public from damage that may be caused by unregulated animals.

1. Validity

This bylaw is not intended to derogate or limit any powers, rights, or obligations set forth in M.G.L. Chapter 140, but is in addition thereto.

2. License Requirement

Any owner/guardian or keeper of a dog six (6) months of age or older shall cause that dog to be licensed as required by M.G.L. Chapter 140, Section 137, commencing on April 1 of each year.

3. License Fee

The fee for every license shall be set by the Town Clerk in accordance with M.G.L. Chapter 40, Section 22F. The fee for a license for any dog that has been neutered or spayed and for which a certificate from a registered veterinarian has been presented to the Town Clerk, shall be set at no more than one-third (1/3) of the fee set by the Town Clerk in accordance with this section. The appropriate license fee, proof of rabies vaccination and neutering/spaying certificate, if any, must be presented to the Town Clerk at the time of application for a license, and, in addition, a stamped self-addressed envelope must accompany an application for a license by mail.

- A. A penalty of thirty dollars (\$30.00) shall be imposed upon all owners/guardians or keepers of dogs failing to renew licenses before June 1 of each year. This penalty shall take effect on June 1 of each year.
- B. No license fee shall be charged for specially trained service animals, provided one of the following: a doctor's prescription, a doctor's letter on office letterhead, a letter from a service animal training program, or a photo ID of said service animal is shown that such an animal is currently being/has been trained to assist an individual with a disability in

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accordance with M.G.L. Chapter 140, Section 139, the Americans with Disabilities Act and M.G.L. Chapter 272, Section 98a. Application shall be made for a license as provided in this bylaw, and license tags issued by the Town must be worn by any such service dog.

- C. In accordance with M.G.L. Chapter 140, Section 138, the owner/guardian or keeper of any dog six months old or older who is a new resident of the Town of Amherst shall register said dog within thirty days of taking up residence, subject to a late fine in accordance with Section 3.A.
- D. No license fee will, or part thereof shall, be refunded because of subsequent death, loss, spaying, neutering, removal from the Town of Amherst, or other disposal of the dog for which the license has been issued, nor shall any fee for a license issued to a new resident be prorated.

4. Dog Regulations

- A. It shall be a violation of this bylaw for which the owner/guardian or keeper shall be liable for a dog to:
 - i. go beyond the confines of the owner/guardian's or keeper's property unless the dog is held firmly on a leash, or is under the control of its owner/guardian or keeper, subject to restrictions of Section 5.A.
 - ii. disturb the peace or quiet or endanger the safety of any person or other animal, by biting, barking, howling, or in any other manner
 - iii. be unrestrained in violation of any order of the Select Board or of the Animal Welfare Officer
 - iv. frighten, kill, maim or otherwise injure another's fowl, livestock or domesticated animal
 - v. chase another's vehicle on any way open to public travel
 - vi. be unlicensed or untagged in violation of state law or of this bylaw.

Violation of this subsection may be subject to a penalty of fifty dollars (\$50.00) for each such violation.

- B. Any person may make a complaint to the Animal Welfare Officer regarding an alleged violation of the preceding subsection. Upon receipt of such complaint, the officer shall investigate, and may issue a written order that the dog be temporarily restrained or muzzled, as the officer deems necessary. Within twenty-one days of the issuance of such a written order, the officer shall file a report requesting a Select Board hearing. On receipt of such report and after examination of the complaint, the Select Board may take actions it deems necessary. The owner/guardian or keeper of a dog subject to such an order of the Select Board may within ten days file an appeal in district court.
- C. The Animal Welfare Officer may impound any dog determined by her/him to be involved in a violation of either of the two preceding subsections hereof. If the owner/guardian or keeper can be ascertained by some identification device on the dog, the Animal Welfare Officer shall immediately advise that person of the dog's impoundment, the procedures for reimbursing the animal holding facility, the right to redeem the dog, and licensing procedures if

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applicable. Any dog so impounded and unredeemed after 10 days may be disposed of as provided in Chapter 140, Section 151A of the Massachusetts General Laws.

5. Dogs Unleashed

- A. No dog shall be permitted to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas. Notwithstanding the prohibitions contained in the preceding sentence, the Conservation Commission, Leisure Service and Supplemental Education Commission, Amherst and Amherst-Pelham Regional School Committees, Select Board or Town Manager may issue regulations which may permit dogs to be unleashed on land controlled by said Commission, Committee, Board or Town Manager.

Violation of this subsection may be subject to a penalty of twenty-five dollars (\$25.00) for each such violation.

- B. Any dog found to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas of the Town of Amherst, except as allowed in Section 5.A., may be apprehended and confined by the Animal Welfare Officer and/or a Police Officer.
- C. Any dog found to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas of the Town of Amherst and not in the presence of its owner/guardian or keeper, except as allowed in Section 5.A., shall be apprehended and confined by the Animal Welfare Officer and/or a Police Officer. Upon impoundment of any dog in accordance with this subsection or the preceding subsection, the Animal Welfare Officer shall notify forthwith the licensed owner/guardian or keeper of said dog, giving the said owner/guardian or keeper a period of ten (10) days within which to recover the dog. For each and every dog picked up by the Animal Welfare Officer or her/his agent there shall be a pickup fee in increasing amounts for each occurrence, not to exceed fifty dollars (\$50.00). Fees, including the daily fee for the care of the dog, are payable by the owner/guardian or keeper before retrieval of the dog shall be allowed.
- D. It shall be unlawful for any person to fasten, chain or tie a dog to a stationary object for a period of time in the downtown business area so as to create an unhealthy situation for the animal or a potentially dangerous situation for a pedestrian, as determined by the Animal Welfare Officer.

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8/2/04 + 12/20/04 Memos
from Kopelman + Paige

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August 27, 2004

MEMORANDUM TO MUNICIPAL CLIENTS

TO: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY

Re: Handling Dog Complaints

We are often asked to assist in the handling of dog complaints pursuant to G. L. c.140, §157, sometimes referred to as the "vicious" or "nuisance" dog statute. It is important for communities to have a system in place to respond to such complaints within an appropriate time frame, as well as an understanding of the underlying process and evidentiary requirements. Doing so will not only streamline local hearing procedures, but will assist us in defending such decisions in the District Court.

A. The Law and Its Requirements

-The statute, which dates back to the late eighteenth century, has been amended and rewritten many times over the past 200 years. Notwithstanding its long history, there are few appellate level cases providing guidance on its interpretation and, indeed, most of those cases have been decided just in the past thirteen years.

Most recently amended in 1995, the statute contains three paragraphs, the first of which is the longest and most important. It states, in pertinent part:

If any person shall make complaint in writing to the selectmen of a town, the officer in charge of the animal commission or person charged with the responsibility of handling dog complaints of a city, or the county commissioners, that any dog owned or harbored within his or their jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, or that any such dog by such barking or other disturbance is a source of annoyance to any sick person residing in the vicinity such selectmen, officer in charge of the animal commission or person charged with the responsibility of handling dog complaints or county commissioners shall investigate or cause to be investigated such complaint, including an examination on oath of the complainant, and may make

Memorandum to Municipal Clients

such order concerning the restraint or disposal of such dog as may be deemed necessary [emphasis added].

B. Your Obligations

Identifying the Problem

The statute applies to both cities and towns and allows anyone, including non-residents, to make a written complaint to the responsible board or official. While a simple letter from the complainant may be appropriate, some municipalities have promulgated standard forms for this purpose. A sample form is enclosed for your information. The benefit of a form is that it requires a complainant to articulate the problem within the context of the statute. That is, while a complainant may provide little detail in a letter, he or she would provide statute-specific information in using a form, which will assist the responsible board or officer to begin investigating.

Note that the statute does not limit the field of potential complainants to private parties. It is entirely appropriate, and indeed very common, for animal control officers or other municipal officials to file the initial complaint.

Conducting the "Investigation"

While the statute does not impose a deadline by which the board or official must do so, we recommend that the investigation be undertaken as expeditiously as possible.

In cities, the person in charge of the "animal commission," or if none, the person responsible for handling dog complaints – often the police chief or his/her designee – is obliged to investigate the complaint. In towns, the Board of Selectmen is ultimately responsible for causing an investigation, although we recommend that the Board designate a hearing officer, such as the Town Manager or Administrator, for such matters, as such hearings can be lengthy.

In both cities and towns, the investigation should begin with written notice from the municipality to the dog owner and/or keeper. Such notice should state that a complaint was received and a formal hearing will be held on a certain date and time. The notice should invite the presence and participation of the owner/keeper together with their attorney and such witnesses as they deem necessary. The complainant, of course, should also receive such notice.

At the beginning of the scheduled hearing, the complainant must be sworn in, preferably by a disinterested Notary Public, Justice of the Peace, or judge, if one is present. Otherwise, the investigating board or officer may administer the oath. The witness, with right hand raised, must "solemnly swear or affirm that the testimony to be given in this matter will be the truth, the whole truth, and nothing but the truth." Failure to swear in the complainant will invalidate the entire proceeding. While it is not necessary to swear in any witnesses other than the complainant, we recommend that you do so in order to preserve the integrity of all testimony. It

Memorandum to Municipal Clients

is generally easiest, at the beginning of the hearing, to ask all persons who intend to testify to stand and be sworn in a single group.

The hearing generally begins with the complainant's testimony and that of his/her witnesses (if any) and is followed by the presentation (or testimony, if sworn) of the owner/keeper and his/her witnesses (if any). The board or officer conducting the hearing has wide discretion as to the process, such as time limits on presentations, whether to allow parties to question one another, or whether the parties' legal counsel (if any) will be permitted to file post-hearing briefs. Such ground rules should be announced at the beginning of the hearing and enforced uniformly. A verbatim transcript of the proceedings is not required, although a secretary or assistant should be present to keep minutes.

The Decision

We recommend that the decision of the municipality be made in writing, although the statute does not so require. In a city, the decision of the responsible officer is final. The same is true with the decision of a Board of Selectmen in a town, but if it designated a hearing officer who has recommended a decision, that recommended decision is not final until formally adopted by the Selectmen.

The decision itself should begin with a jurisdictional recitation, such as "Pursuant to the provisions of G. L. c.140, §157, the City/Town held a hearing on _____. X witnesses, including the complainant, who were duly-sworn, testified. X exhibits, which are incorporated into this decision by reference, were presented." The decision should then include a summary of the facts presented, such as the identity of the dog, its owner, the property at issue, and pertinent incidents with specific dates.

Of critical importance, the responsible board or official must make the following specific findings in order for the decision to survive an appeal:

1. That the dog at issue constitutes a "nuisance" to the community, and the dog constitutes a nuisance because:
 - a. It has a vicious disposition; or
 - b. It barks excessively; or
 - c. It creates some other disturbance (explain).

or

2. That the dog, as a result of such barking or other disturbance, causes annoyance to a sick person within the jurisdiction of the responsible board or official.

Memorandum to Municipal Clients

Most municipalities make a finding that the dog is a nuisance because it has a vicious disposition. In some instances, dog owners have successfully challenged such a finding in the District Court by presenting evidence that while the dog's conduct during the relevant instances may have been objectionable, such conduct was "normal" for a dog and the animal therefore does not have a "vicious" disposition as compared to other dogs. Accordingly, unless the responsible board or officer believes that the evidence presented warrants a finding of viciousness as compared to normal or expected reactions of other dogs in similar circumstances, a municipality may be better served by basing any decision on excessive barking, where applicable, or some "other disturbance."

Excessive barking, of course, is self-explanatory. This provision has survived a Constitutional challenge where a dog owner complained that the term "excessive barking" was too vague. See Commonwealth v. Ferreri, 30 Mass. App. Ct. 966, 967 (1991). When ruling that a dog creates some "other disturbance," a responsible board or official should be very specific as to the nature of that disturbance, together with the facts supporting it. Where a dog repeatedly breaks loose of its enclosure and runs around the neighborhood chasing vehicles, for example, such a situation may warrant a finding that the dog, while perhaps not "vicious," constitutes a nuisance by reason of that disturbance.

After making the critical factual determination described above, the responsible board or official must, as part of the decision, then enter an appropriate order concerning the "restraint or disposal of such dog as may be deemed necessary."

The range of options includes: (a) restraint; (b) banishment; and (c) euthanization. We recommend that a decision impose the least severe order necessary. That is, where a dog simply escapes from its owner's property, an appropriate order would impose reasonable additional controls to restrain the animal, such as the erection of a new fence and/or on-site kennel cage. Where lesser measures have not worked or, in the opinion of the responsible board or official, where such lesser measures would not abate the nuisance, a more harsh remedy may be in order. Euthanization is generally reserved for situations where a dog is so uncontrollable or vicious that no other option is appropriate. Orders are most proper and generally defensible on appeal where the conditions aim simply to abate the nuisance rather than punish or otherwise penalize an owner for past problems.

The decision may take the form of a letter to the dog owner/keeper or may be a more formal document. The municipality is vested with wide discretion in this regard, so long as it includes the findings and order set forth above.

Also, while the statute does not require the decision to include appeal information, we recommend that you include language, such as "If you are aggrieved by this decision, you may appeal it to the _____ District Court within ten days pursuant to G. L. c.140, §157." Such language is helpful when challenging the occasional request by a dog owner to file a late appeal on the grounds that he or she was not aware of his/her appellate rights.

Memorandum to Municipal Clients

C. The Appeals Process

The first paragraph of G. L. c.140, §157, also provides the process for appealing the decision. It requires the dog owner/keeper to file a civil suit in the District Court serving your community within ten days after the decision. The matter is presented first to a magistrate, who hears the evidence that was presented to the municipal board or officer. The magistrate must affirm the municipal decision unless there is a specific finding that such decision was made "without proper cause or in bad faith," in which case the magistrate reverses the decision. A magistrate could determine that a decision was made without proper cause if, for instance, the complainant was not properly sworn to testify in the original hearing. Bad faith might be found where a decision is intended to punish an owner rather than abate the nuisance caused by the dog.

Either party may appeal the magistrate's ruling to a judge of the District Court, which results in a de novo trial. This means that all of the evidence is presented anew to the judge. Note that unlike the magistrate, the judge is free to render any decision he or she deems appropriate, which may include simply affirming or vacating the municipal decision, but sometimes results in the imposition of one or more conditions concerning the restraint of the dog.

While the statute says that the judge's decision is "final and conclusive" on all parties, the General Laws do provide an avenue for further appeal, albeit a limited one. Pursuant to G. L. c.249, §4, known as the certiorari statute, the Supreme Judicial Court and the Superior Court are vested with jurisdiction to review matters decided by inferior courts to "correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal...." This means that the Superior Court review would be limited to the question of whether the District Court judge made errors of law during the trial. It is not another de novo review and no testimony is presented. A final judgment of the Superior Court, of course, would then be subject to an appeal to the Appeals Court and, possibly, the Supreme Judicial Court, but again, the only question on appeal would be one of legal errors.

D. Enforcement

Pursuant to the last paragraph of G. L. c.140, §157:

Any person owning or harboring such dog who shall fail to comply with any order of the selectmen, officer in charge of the animal commission or person charged with the responsibility of handling dog complaints, county commissioners or district court, as the case may be shall be punished by a fine of not more than twenty-five dollars for the first offense and not more than one hundred dollars for a second or subsequent offense, or by imprisonment for not more than thirty days, for the first offense and not more than sixty days for a second or subsequent offense, or both.

Memorandum to Municipal Clients

In order to pursue the penalties under this section, the municipality must file an application for a criminal complaint in the District Court. The district attorney's office will either handle the matter or will appoint Town Counsel or the City Solicitor as a special assistant district attorney, because only the Commonwealth – and not the municipality – may prosecute in such an action.

Alternatively, a municipality may file an enforcement action in the Superior Court. This is helpful where the district attorney's office is either unable or unwilling to prosecute the criminal matter, where fines and/or imprisonment are not important, and where a court order requiring certain actions to be taken is necessary. A District Court judge handling criminal enforcement can only impose fines. He or she cannot compel the dog owner to comply with any conditions that may have been imposed. Conversely, the Superior Court is specifically vested with a power known as "equitable" jurisdiction, see G. L. c.214, §1, which allows a Superior Court judge to enter such orders and, more importantly, to enforce them through contempt proceedings.

Note that pursuant to G. L. c.140, §158, a police officer, constable, or dog officer is specifically authorized to kill a dog that is subject to an order pursuant to G. L. c.140, §157, when such dog is found outside the enclosure of its owner or keeper and not under his or her immediate care. However, we recommend that unless such immediate destruction is necessary for public safety reasons, the dog should be captured and held by the municipality pending further enforcement proceedings as set forth above.

E. Status of the Dog During Appeal or Enforcement Litigation

As described above, where an owner disputes the decision, he or she will either file suit against the municipality appealing its decision, or the city or town will file suit against the owner to compel compliance with the decision (where the appeal period has expired without compliance).

We are often asked to describe the options available to a city or town in such circumstances, from the moment the decision is issued until the final disposition of litigation. Since it is our opinion that a decision is enforceable unless or until a Court of competent jurisdiction otherwise overturns it, an owner is obligated to comply with the decision immediately.

Obviously, where the decision requires the destruction or banishment of the dog, it is not reasonable to expect the owner to forthwith comply with the decision if he or she intends to appeal it. In a case where the municipality has deemed an animal to constitute such a nuisance that destruction or banishment are the only options, we recommend that the owner place the dog in the local animal shelter or, alternatively, in a third-party kennel, at the owner's expense, pending the final outcome of litigation. This way, the nuisance is abated by the removal of the dog from the neighborhood, and the owner suffers no prejudice, as the dog will not be destroyed or banished during the litigation.

KOPELMAN AND PAIGE, P.C.

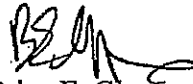
Memorandum to Municipal Clients

Very often, however, an owner will refuse to place his or her dog in either a shelter or a kennel and, instead, will want to keep it on the premises. In such instances, it may be necessary to obtain a court order, or in some cases, an administrative inspection warrant, to compel the removal of the dog from the owner's property during the appeal.

F. Conclusion

Followed carefully, the provisions of G. L. c.140, §157, generally result in the abatement of nuisances caused by dogs. Seemingly minor defects in the process, however, can invalidate even the most fair and equitable municipal order. Accordingly, use this memorandum to guide you through the statutory framework to arrive at an appropriate order, well-suited to survive a challenge if appealed.

Very truly yours,



Brian E. Glennon, II

BG/rif

Enc.

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MEMORANDUM TO MUNICIPAL CLIENTS

TO: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY

Re: Handling Dog Complaints – New Decision Update

In August of 2004 we sent you a comprehensive Memorandum addressing how to handle dog complaints under G. L. c.140, §157. As pointed out in that Memorandum, there are few appellate decisions interpreting the statute, commonly known as the vicious dog law. I am pleased to report that this firm recently obtained a successful ruling in the Appeals Court which explains and resolves several issues under that statute.

In Durbin v. Board of Selectmen of Kingston, 62 Mass. App. Ct. 1 (2004), the Appeals Court upheld the selectmen's ruling that two dogs were of vicious disposition and should be humanely euthanized. The case arose out of an attack on a two-year old child that occurred on the dog owners' property and followed several incidents in which the dogs had chased and threatened people both on and off the owners' property. After the selectmen's hearing under c.140, §157, the owners appealed to the clerk-magistrate of the District Court. The clerk-magistrate upheld the board and the owners appealed to a judge of the District Court, all as provided for in the statute. A full trial de novo was held in the District Court and the judge made findings of fact and rulings of law, upholding the selectmen's decision. The owners then filed a certiorari complaint to the Superior Court and that court, upon review of the record of the District Court, affirmed the District Court decision. The owners then appealed to the Appeals Court, which affirmed the Superior Court rulings.

1. Procedures at the Selectmen's Hearing.

One of the issues raised by the dog owners in the Durbin case was that the person who signed the complaint requesting the selectmen's hearing did not testify at the hearing. While c.140, §157, states that the selectman shall investigate a complaint, "including an examination on oath of the complainant," the Appeals Court found that the failure of the complainant to testify at the hearing was not fatal. The Court noted that the complainant was not an eyewitness to the attack and that other witnesses did testify, under oath, regarding the attack and the previous

Memorandum to Municipal Clients

behavior of the dogs. The Appeals Court, in explaining its ruling, stated that those persons were subject to cross-examination and that the complainant could have been subpoenaed by the owners. The Court therefore found that the dog owners had failed "to establish that their substantial rights were affected . . . in any way, much less injuriously" due to the lack of testimony by the complainant. 62 Mass. App. Ct. at 10.

While we have advised our clients that testimony by the complainant would be required, and in many cases such testimony is preferable, the ruling in the Durbin case has now made it clear that the statute will not be interpreted rigidly and that the lack of such testimony, per se, will not render the selectmen's decision defective.

2. Procedures on Appeal.

As the procedural history of the Durbin case demonstrates, the selectmen's decision was subject to four successive levels of judicial scrutiny. Prior to the Appeals Court ruling, there was some question regarding what appellate rights were provided under c.140, §157. In the Durbin decision, the Court made it clear that following a de novo District Court trial, certiorari review by the Superior Court is permitted. That review, however, is strictly limited to whether the District Court committed errors of law and whether the District Court's decision was supported by substantial evidence in the record. The Appeals Court stated: "the reviewing court is not empowered to make a de novo determination of the facts, to make different judgments on the credibility of witnesses, or to draw different inferences from the facts." 62 Mass. App. Ct. at 6. Thus, in order to protect a decision under c.140, §157 on appeal, it is crucial to establish a record at the District Court stage that supports the selectmen's ruling.

3. Impact of Allegations of Changed Circumstances on Proceedings.

The principal argument made by the dog owners in the Durbin case was that events following the incident (and the selectmen's hearing and District Court trial) should be considered because, they contended, these events established that the circumstances supporting the decision had changed significantly. The changed circumstances consisted of the owners having moved from the neighborhood where the incidents had occurred and a description of measures they had taken and were prepared to take to restrain the dogs. In support of this argument, they relied on the Appeals Court's decision in Cullinane v. Selectmen of Maynard, 50 Mass. App. Ct. 851 (2001), which did allow evidence regarding subsequent events to be introduced. In that case, two dogs were involved and one of the dogs died while the appeals were pending.

In the Durbin case, the Appeals Court thoroughly analyzed and disposed of the owners' argument in favor of the town. The Court held that facts developed subsequent to the incident could not be raised in an appeal under c.140, §157. In so ruling, the Court stated that the facts in Cullinane were "unique" and the "remand decision" was "inextricably linked to the nature of the case as presented to the District Court." 62 Mass. App. Ct. at 7.

Memorandum to Municipal Clients

Additionally, the Appeals Court settled another issue raised by Cullinane: to what extent must a court determine that alternatives to euthanizing a dog be considered. Again, the Court explained the limits of its prior decision: "our decision in [Cullinane], based on its unique set of facts, did not announce a general principle that an order to dispose of a dog whose vicious disposition has been established by the evidence cannot stand unless it is clearly demonstrated that no less severe alternative exists." 62 Mass. App. Ct. at 11. In other words, the Durbin decision established that a disposition order should be affirmed even if less extreme measures could have been imposed.

4. Interpretation of "nuisance by reason of vicious disposition."

General Laws, c.140, §157, applies to a dog that is "a nuisance by reason of a vicious disposition." The definition of that critical phrase does not appear in the statute. In the Durbin case, the owners contended that the phrase should be interpreted to mean "accustomed to attack and injure mankind" or have "a general propensity to be vicious."

The Appeals Court settled the question by again rejecting an "unduly restrictive" interpretation of the statute. The Court relied on evidence that showed that the dogs "acted together in numerous acts of assaultive, menacing behavior that came perilously close to causing physical injury and frightened residents of and visitors to the neighborhood, both on and off the [owners'] property and in spite of measures they had taken to restrain the animals." 62 Mass. App. Ct. at 13. That evidence was found sufficient by the Appeals Court to meet the statutory standard of "vicious disposition." In so holding, the Court rejected the notion that a uniform standard could be imposed. A determination of whether a dog possesses a "vicious disposition" therefore rests on the specific evidence of each complaint.

Very truly yours,



Patricia A. Cantor

Hepburn, Carol

From: Matuszko, Michele
Sent: Friday, October 10, 2008 8:22 AM
To: Scherpa, Charles; Hepburn, Carol
Subject: FW: Dogs

From: Karen Eddings [mailto:kareneddings@mac.com]
Posted At: Friday, October 10, 2008 7:20 AM
Posted To: police@amherstma.gov
Conversation: Dogs
Subject: Dogs

October 10, 2008

Dear Charlie and Carol,

I know you have more important and serious issues to deal with than a neighborhood dog dispute especially now with the recent tragedy here in town. I am a committed and cooperating citizen of Amherst and feel badly that this situation with my neighbor has gotten out of hand. As you know Carol and I have worked hard to compromise and Carol has offered her house for a meeting! But only to hear a big NO each time.

I removed the dog from Blackberry Lane because you and Carol asked me to and I needed a break for the ongoing surveillance that was occurring on a daily basis, as you know from all the calls.

I called a lawyer in Boston who has knowledge in Animal Law. She has stated that the animal needs to be considered a *vicious threat*. I called my vet and she suggested having a Animal Behaviorist to assess Leah. I did. Her name is Elise McMahon, and she is a PhD Candidate in Animal Behavior at UMASS. You will be receiving a detailed report of her close examination of Leah early next week.

On Sept. 12 at 5PM a neighborhood child was warned several hundred yards behind where the incident happened not to come near the dog. She chose to come up from behind me as I was entering my property that rainy Friday night, entering the dogs space. Leah snapped at the child as she rode her bike off. The child never fell off the bike or appeared upset nor at that time did I see any broken skin. I heard later from Carol that there was a puncture wound. Just like we can't avoid an accident from behind us while driving in the car. No one in the 2 1/2 years I have had Leah, blatantly disrespected my strong order not to come near "this dog".

The second situation almost two years ago was similar when a grown man approached my teen daughters wanting to pet a leashed dog on a bike!

I am at fault that the dog was without its muzzle and paid the fine. For the past several years I walk 3-4 dogs at a time up on the trail at the top of Sacco and off to Cowls wooded area on Henry. I do this because I don't like dogs eliminating on peoples lawns.

The night of the incident it was pouring rain and I was in a hurry because of the rain. The children were persistent about wanting to know why they could not pet the dog, and as I mentioned the girl followed me down the hill and rode her bike into Leah's space.

Leah has become a family pet and my 3 teenagers and my self take turns walking her. This has been very difficult and unnecessary having to walk her out of the neighborhood and into another, not respecting the fact that there are bikes and kids in other neighborhoods too.

So once again, the safest place to walk the dog is up Sacco, which is across the street from me and onto the trail off to Cowls wooded property on Henry. I NEVER see anyone in there and its quite nice and peaceful.

So until the hearing I promise to only walk Leah there leashed with a muzzle on. There are no bikes or kids playing on Sacco, since a steep incline. And as you will see in the report, Leah is not a vicious threat, but an affectionate, obedient Collie/Hound mix

10/10/2008

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. This section also outlines the various methods used to collect and analyze data, ensuring that the information is reliable and up-to-date.

2. The second part of the document focuses on the implementation of the proposed changes. It details the steps involved in the rollout process, from initial planning to final execution. This section also addresses potential challenges and provides strategies to overcome them, ensuring a smooth transition for all stakeholders involved.

3. The third part of the document discusses the ongoing monitoring and evaluation of the project. It highlights the importance of regular communication and reporting to keep all parties informed of the progress. This section also includes a timeline for the project, with key milestones and deadlines clearly defined.

4. The fourth part of the document provides a summary of the findings and conclusions. It reiterates the key points discussed throughout the document and offers recommendations for future actions. This section also includes a list of references and a glossary of terms, ensuring that all readers have a clear understanding of the document's content.

5. The fifth part of the document is a concluding statement. It expresses the organization's commitment to transparency and accountability, and its confidence in the success of the proposed changes. This section also includes a final call to action, encouraging all stakeholders to support the project and work together to achieve the organization's goals.

10/12/08 + 12/8/08
Evaluations by Canine
Head Start

Canine Head Start

Elise McMahon
125 East Chestnut Hill Road
Montague, MA 01351

emcmahon@canineheadstart.com
www.CanineHeadStart.com
413 367 0094

October 12, 2008

Karen Eddings
84 Blackberry Lane
Amherst, MA

Behavioural Evaluation of Leah Jessie

Leah was evaluated at the home of Karen Eddings at her request subsequent to an event that occurred on September 12 at 5pm. Present for the evaluation were two of Ms. Eddings' children, Caitlyn age 15 years and Sean, age 18 years. The evaluation took place from 5:30pm to 7:00pm on Thursday, October 9th, 2008.

Background:

Leah is an approximately 4.5 year old, spayed, female mixed breed. Based on colouring and body shape it is possible that she is a collie/lab/hound mix. It was reported by Ms. Eddings that she acquired Leah as a 2-year old and that Leah has lived at the current address for the past 2.5 years. Leah currently lives with Sparky, a 7.5-year old Golden Retriever, and a recently acquired 3.5-month old Blue Tick hound puppy, Tic.

Ms. Eddings described the event that precipitated this evaluation. On September 12th at 5pm Ms. Eddings was out for a walk with Leah. Leah was on leash and as it was raining they were taking a short walk down the block. A few houses away from their home some kids rode by on bicycles and asked if they could pet the dog. Ms. Eddings told the children that they could not since Leah gets excited about people on bicycles and proceeded to her driveway. As she was turning into her drive a young girl from the group rode up to Ms. Eddings and Leah approaching them from behind. Leah nipped the girl as she came alongside her. Ms. Eddings stated that she was surprised at the sudden appearance of the child and after Leah had nipped her she asked if the child was alright. Ms. Eddings recalls the child saying "opps" and riding off. Ms. Eddings was later informed that the child had received a small puncture wound with lacerations from the bite but she was not provided with a copy of the hospital report.

Leah has reacted similarly on two other occasions. The first incident occurred roughly two years ago when Leah ran through an electric fence system that she had been improperly trained to and nipped at a person on rollers blades. There was no broken skin reported. The second incident occurred when a man rode by Leah on a bike and Leah nipped him. This incident was reported to result in a small tear.

Ms. Eddings described Leah as a dog who was initially a bit shy of people with whom she was unfamiliar. In the 2.5 years she has lived with the Eddings family, she has become much more outgoing and confident in her interactions. This later statement was substantiated by

my observations and interactions with Leah. This is an important component of Leah's behaviour and history. A dog who is fearful and feels threatened will often defensively snap out towards the perceived threat. Desensitization and confidence building directed towards the "threatening" stimuli and teaching alternative behaviours are highly successful methods of dealing with this type of fear reaction.

Evaluation of Temperament:

Leah presents herself as an outgoing, friendly dog. This evaluator was greeted at the door by Ms. Eddings and Leah. Leah was unleashed and therefore free to behave in her natural manner. Leah's interactions at the door were appropriate and she did not display any signs of hostility or resentment towards having a stranger enter the home. Upon sitting down in the living room to begin the interview part of the evaluation, Leah promptly came forward to the evaluator and began soliciting pats. It was fairly easy to redirect her attention and she settled down when told to do so by Ms. Eddings. After a brief interview with Ms. Eddings during which Leah either interacted with the evaluator or played with the puppy Tic on the floor by the couch, I engaged Leah in a brief training session to see how willing she was to work with a stranger. Leah was keen for the interaction and worked through various exercises including sit, and a focus exercise called "Watch Me". I then proceeded to test her reactions to physical manipulation from a stranger by opening her mouth and examining her teeth, picking up her feet and moving her toes, pushing on her back (a behaviour which can be interpreted as dominant by canines), looking into and pulling on her ears, and holding and gently pulling her tail. Leah's attitude through out this physical exam was friendly and playful.

After this portion of the evaluation I requested that Ms. Eddings take Leah outside to the area where the incident occurred. I first walked with and then rode a bicycle, coming upon Ms. Eddings and Leah in the same area. As I first approached, Leah looked keenly at the bike and then recognized me and came up to me in a friendly, non-threatening manner and solicited a pat. As Ms. Eddings walked Leah I made approaches from the side, from behind and from in front of the pair. After first acknowledging me on the bike Leah turned her attention to sniffing the ground. There were three older kids playing ball in the road and one asked to say hi to Leah. Leah approached in a friendly manner and received treats and pats from the boy. As the kids continued to play ball they were running around and throwing the ball. At no time did Leah become reactive or even particularly interested in their activities. I took the leash from Ms. Eddings and had Leah move along with me as I rode the bike. She clearly thought this was odd but adjusted quickly and was willing to cooperate and trotted alongside the bike.

During my 1.5-hour interaction and evaluation of Leah I found her to be an outgoing, well-balanced dog who has a friendly demeanor. She can be exuberant in her play when engaged in a "hand game" but could be redirected towards a toy. She responds to the command "sit" by settling and either sitting for petting and attention or nuzzling. I found her to fall within the normal behaviour categories in all of her reactions to the challenging behaviours I engaged her in, i.e., pushing on shoulders, taking and manipulating head position, taking toy from mouth, exposure to kids running and playing, person biking by her and with her.

Assessment and Recommendations:

Leah has a history of being reactive around people on bicycles or roller blades. It is not uncommon for some dogs to get "turned on" by quick and sustained movement (cars, joggers, cyclists, etc), especially if they have not been exposed to this type of stimuli during the critical

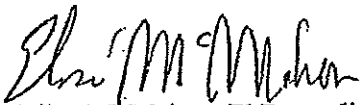
period of socialization (4 – 16 weeks). Because of Leah's demonstrated ability to work with and around a person on a bicycle she is an excellent candidate for behaviour modification.

It is recommended that Ms. Eddings work with Leah first around familiar people moving about on various wheeled objects, (bikes, roller blades) and then move on to working her in a variety of settings around unfamiliar people. This is something she could do under the guidance of an animal behaviorist and then continue working with Leah on her own. In addition to desensitizing Leah to people moving around her on bicycles, roller blades, skateboards, etc., it is recommended that she be taught some basic behaviours which would be incompatible to reacting towards a moving person. These behaviours serve as highly reinforced alternative behaviors and this type of program is highly successful when working with reactive dogs. I must say that I did not find Leah to be highly reactive but certainly from her behavioural history she would benefit from this type of behaviour modification program. I also suggest that she be walked on a Premier Gentle Leader, which is a device that will give Ms. Eddings greater control. This is a training device and should be used as such. Lastly, I have suggested that Ms. Eddings take Leah to an AKC Canine Good Citizen class and or test. There are a number of options for taking this class and test in the area and one may do either the test itself and/or take a class preceding the test. Ms. Eddings indicated that she would be happy to comply with the above suggestions and planned on going to purchase the Gentle Leader the day following this evaluation.

It appears to this evaluator that Ms. Eddings acted with concern and appropriate action after the bite incident with the child on the bicycle (i.e.; having the dog evaluated and looking into behaviour modifications training). She is aware of what she must do to be a responsible dog owner and indicates a willingness to do so. Leah appears to be a friendly outgoing dog that reacts to certain types of movement by grabbing out. Although this is not uncommon behaviour for canines, it certainly becomes an undesirable one when damage is inflicted upon humans. Leah's friendly nature, her willingness to work and her ability to make quick associations place her in a category of dogs that are relatively easily rehabilitated.

I am happy to answer any questions the hearing officers may have for me.

Respectively submitted,



Elise McMahon, PhD candidate
Animal Behaviourist
Canine Head Start
125 East Chestnut Hill Road
Montague, MA 01351

Cc: Charles Scherpa
Chief of Police
111 Main Street
Amherst, MA 10002

Carol Hepburn Animal
Welfare Officer
1 Mullins Way
Hadley MA 01035

Canine Head Start

Elise McMahon
125 East Chestnut Hill Road
Montague, MA 01351

emcmahon@canineheadstart.com
www.CanineHeadStart.com
413 367 0094

December 8, 2008

Karen Eddings
84 Blackberry Lane
Amherst, MA 01002-1545

Follow-Up Behavioural Evaluation of Leah Jessie

A follow-up evaluation of Leah was conducted at the home of Karen Eddings at her request. Present for the evaluation were Ms. Eddings and her daughter Caitlyn. The evaluation took place from 4:15pm to 5:15pm on Friday, December 5, 2008.

Background:

Leah is an approximately 4.5 year old, spayed, female mixed breed. Based on colouring and body shape it is possible that she is a collie/lab/hound mix. Leah was evaluated on October 9, 2008 pursuant to a bite incident. See the first evaluation dated October 12, 2008 for further background and temperament evaluation details.

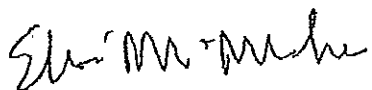
For this follow-up evaluation Leah was put into three potentially stimulating situations to determine her level of reactivity after a period of desensitization work that has been undertaken by Ms. Eddings. First, Leah was outside in her driveway when this evaluator arrived. Leah demonstrated socially appropriate behaviour in her greeting and appeared relaxed and happy to interact with a relative stranger on her property. Second, Leah was taken back into the house and brought out again when this evaluator was riding a bicycle by the house and up and down the street. She showed little interest in the person on the bicycle and was able to follow Ms. Eddings' verbal directions. Leah's reactions were tested further by closely following her with the bicycle in a somewhat threatening manner. Leah avoided rather than approached the person and bicycle and showed no resentment or reactivity after the interaction. The final situation that Leah was tested in was having a non-family member enter her house unannounced. Leah behaved in an appropriate manner by going up to the person and greeting them in a relaxed, outgoing manner.

Assessment and recommendations:

Leah has shown improvement in her attitude towards people on bicycles and her ability to redirect towards her owner when so requested. Further desensitization should be done working with Leah in a variety of stimulating situations and getting automatic, conditioned responses to verbal commands that serve to elicit alternative behaviours. Commands such as *Watch Me* and *Leave It* have been used very successfully to redirect a dog's attention away from a fear or aggression-eliciting stimulus.

Leah has been reported to have bitten three people over a two and a half year period. Given that she spends time outdoors, has historically been taken on long outdoor walks, and has had a variety of people coming in and out of the house this bite history in and of itself does not indicate a dog who is a general threat to society. Can she bite? Certainly, as can any dog. The question becomes what were the circumstances that led up to the bite incidents and can they be avoided. Leah is a quick and eager learner. Ms. Eddings should be able to get better control of Leah with training and behaviour modification. However, as demonstrated by the incident of September 12, 2008, Ms. Eddings will not be able to control everyone else's behaviour. For that reason it is recommended that Leah continue to wear the muzzle and be on leash when she is outside of her home. The additional recommendations from the original assessment still stand.

Respectively submitted,



Elise McMahon, PhD candidate
Animal Behaviourist
Canine Head Start
125 East Chestnut Hill Road
Montague, MA 01351

10/22/08 email from
Joel Bard +
Dog Complaint form

Page 1 of 2

Shaffer, Larry

From: Joel Bard [JBard@k-plaw.com]
Sent: Wednesday, October 22, 2008 3:38 PM
To: Shaffer, Larry
Subject: Follow up - RE: Dog Hearing - Vicious Dog

Hello

Pages 22-23 of the Town Bylaws appears to answer the question. Page 23, section 4, Dog Regulations, calls for a hearing by the SB after the Animal Welfare Officer has filed a report with the SB. I don't know what the facts are at this point, but it sounded like the SB has received such a report. If that's the case, the bylaw clearly puts the hearing in front of the SB.

Joel

From: Joel Bard
Sent: Wednesday, October 22, 2008 3:30 PM
To: Shaffer, Larry
Subject: Dog Hearing - Vicious Dog

Hi Larry

I have attached two K&P memos and I have reproduced the key statute below. I will give you a call to discuss further the issue of who must hold the hearing. I will look at the Town's Bylaws to see if dog hearings are addressed and I will call you to hear about the background facts. It seems likely that if the complaint was brought to the Select Board that the SB will have to hold the hearing, but I will follow up to confirm.

Please call if you have any questions.

Joel

Chapter 140: Section 157. Vicious dogs; nuisance; barking or other disturbance; annoyance to sick person; attacks on other dogs

Section 157. If any person shall make complaint in writing to the selectmen of a town, the officer in charge of the animal commission or person charged with the responsibility of handling dog complaints of a city, or the county commissioners, that any dog owned or harbored within his or their jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, or that any such dog by such barking or other disturbance is a source of annoyance to any sick person residing in the vicinity such selectmen, officer in charge of the animal commission or person charged with the responsibility of handling dog complaints or county commissioners shall investigate or cause to be investigated such complaint, including an examination on oath of the complainant, and may make such order concerning the restraint or disposal of such dog as may be deemed necessary. Within ten days after such order the owner or keeper of such dog may bring a petition in the district court within the judicial district of which the dog is owned or kept, addressed to the justice of the court, praying that the order

11/10/2008

may be reviewed by the court, or magistrate thereof, and after such notice to the officer or officers involved as the magistrate deem necessary the magistrate shall review such action, hear the witnesses and affirm such order unless it shall appear that it was made without proper cause or in bad faith, in which case such order shall be reversed. Any party shall have the right to request a de novo hearing on the petition before a justice of the court. The decision of the court shall be final and conclusive upon the parties. Any person owning or harboring such dog who shall fail to comply with any order of the selectmen, officer in charge of the animal commission or person charged with the responsibility of handling dog complaints, county commissioners or district court, as the case may be shall be punished by a fine of not more than twenty-five dollars for the first offense and not more than one hundred dollars for a second or subsequent offense, or by imprisonment for not more than thirty days, for the first offense and not more than sixty days for a second or subsequent offense, or both.

The act of a dog in attacking or biting another dog or other animal may be made the subject of a complaint under the provisions of this section.

Magistrates shall exercise their authority hereunder subject to the limitations of section sixty-two C of chapter two hundred and twenty-one.

Joel B. Bard, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110
(617) 556-0007
jbard@k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and its attachments, if any, and destroy any hard copies you may have created and notify me immediately

COMMONWEALTH OF MASSACHUSETTS
CITY/TOWN OF _____

DOG COMPLAINT
G. L. c.140, §157

Complainant Information

Name:
Address:
Telephone:

Dog Information

Dog's name:
Description (breed, color, etc.):
Owner's Name (if known):
Owner's Address (if known):

Complaint

I, the complainant identified above, state that the dog described in this complaint:
(select all that apply)

- ☐ Constitutes a nuisance because (you must also select at least one of the following):
- ☐ it has a vicious disposition
 - ☐ it barks excessively
 - ☐ it causes the following disturbance (describe)

- ☐ By reason of its excessive barking/and or other disturbance, constitutes a source of annoyance to the following sick person (name and address):

Please provide a brief explanation of the circumstances:

I therefore respectfully request that an investigation be undertaken pursuant to the provisions of G. L. c.140, §157, resulting in the issuance of any order necessary to abate the above-noted nuisance. I understand that this obligates me to attend a hearing and provide testimony under oath and I intend to make myself available for this purpose.

Signature of Complainant

Date of Complaint

Dog Hearing notes
12/11/08

DOG HEARING
December 11, 2008
4:03pm

Attendance:

Name	Address	Phone Number
Sean Eddings	84 Blackberry Lane	461-5515
Barbara Eddings	116 High Street	253-1158
Renee Fye	288 Grantwood Drive	549-1472
Karen Eddings	84 Blackberry Lane	519-2375
Caitlin Eddings	84 Blackberry Lane	896-7635
Lauren Eddings	84 Blackberry Lane	461-6812
Kevin Eddings	71 S. Prospect Street #11	256-1984
John Piepul	158 State Street	237-3431
Elise McMahon	125 East Chestnut Hill Road	387-0094
David Rothenberg	135 Iduna Lane	253-4747
Barbara Rothenberg	135 Iduna Lane	253-4747
Rachel Connelly	154 Grantwood Drive	230-3422
Addie Connelly	154 Grantwood Drive	230-3422
Catch Connelly	154 Grantwood Drive	230-3422
Marlene Musante	43 Blackberry Lane	549-4752
Matthew Musante	43 Blackberry Lane	549-4752
John Musante	43 Blackberry Lane	549-4752
Carol Hepburn	111 Main Street	478-7084
-Animal Control Officer		
Charles Scherpa	Amherst Police Department	
-Chief of Police		

Dog Hearing
December 11, 2008

*** Matthew Musante**

Sworn in: 4:15pm

Yes: 4:25pm

- 4:00- Bite upon the left leg
- Ms. Eddings came out and put cleaning solution
- I think tick dog bite
- 20' I first saw the dog
- The dog was running
- Move forward a little bit

Diagram

- Dog was released and ran off
- May have seen the moving wheels

*** David Rothenberg**

Sworn in: 4:27pm

- Over one block approximately
- I was bicycle riding up Sacco Drive
- I did not see the dog coming
- Dog bit me in the right calf
- Dog bite punctuated the skin – “half dollar size piece of skin off”
- Had never seen the dog before
- I was riding with a friend- “I think that dog bit me”
- Dog bit through the bicycling tights
- The dog was gone after it bit me
- Postman told me it was the Edding's dog
- The dog was tied up at the tree
- You talked with Mrs. Edding's- Mrs. Edding's treated my leg
- She said “the dog was an abused dog and went after people on wheels” “It has a phobia”
- I was concerned that the dog was dangerous- I talked with the dog officer
- I told her to keep the dog on a leash, muzzle

***Addie Connelly**

Sworn in: 4:40pm

- Is eight years old
- Going to the waterfall- at the corner of Blackberry and Grantwood Drive
- I saw the doggie
- The dog bit my leg
- All from our riding
- The owner was walking the dog
- A couple of skin masks
- The dog owner said that " I would be fine"
- It got more red

*** Mrs. Edding's**

Sworn In: 5:05pm

- 84 Blackberry Lane
- Leah- 4 ½ years old
- Three years have owned the dog
- The first year I owned the dog- it nipped
- It never broke skin
- She felt threaten ; 5 or 6 nips- no other skin breaks or bleeding
- Anxiety, stress, nervousness, very nervous dog
- Carol Hepburn did visit me- long talks. She suggested tying the dog up and having a muzzle
- "Had an electric fence. Dog broke through electric fence."
- Carol called me and lectured me again
- I agree to muzzle the dog
- Dog was not muzzled for Addie Connelly
- "No. I did not see any blood and I thought everything was OK"
- " I felt bad that it happened"
- "It was a fair responsible order to muzzle the dog?!"
- Ms. Eddings- YES
- "Dog reacts and does not attack"

***Carol Hepburn- Animal Control Officer**

Sworn In: 5:05pm

- Quarantined-highly suggested to Mrs. Eddings
- "I told her to muzzle the dog at all times"
- "Was the muzzle an order?"
- "She should look into training"
- NO

Order after Rothenberg's bite

- keep the dog on a leash and keep it away from bikes and wheeled devices of any kind and to get some help for the dog.
- "The dog was not on a leash when it bit Matthew"

Order after Connelly's bite

- Get a "better" strategy for the dog
- Draft order – Had to leave a muzzle on at all times outside of the house
- Recommend she should get the dog trained
- "The dog is not a viscous dog"
- "Viscous dog – one that deliberately hangs on and rips your skin apart for no reason"
- "Dog can be trained"

***Addie Conelly**

Order

- Gave her a fine
- And keep dog in a muzzle while in the Town of Amherst

Eddings

- "I do remember the order to muzzle the dog after Rothenberg"

Carol Hepburn

- I have worked with the dog's owner
- Dog can be trained
- Should wear a muzzle
- Dog is not a viscous dog
- Has had issues

Elise McMahon

- Animal Behaviorist – Ph.D in Animal Behavior Conversation
- Hound/Collie – very little Shepard
- Observe the dog twice
 - October 9, 2008- 1st evaluation _____
 - December 5, 2008- 2nd evaluation _____
- How often have done such evaluations?
 - Aggressive dogs – 3 evaluations/ 10 Foster Care
 - 100s and 100s of dog evaluations

Evaluate dog and owner

- History of reactively "not atypical" so having a nipping dog is not unusual
- "Poor socialization"

- "Fear aggression"

Town of Amherst Dog Agreement: December 11, 2008

- typed already

- Dog should be classified as "reactive"
- Need to desensitize to the reaction- train for reduction
- Socially outgoing "I think she can be desensitized"
- I would recommend that the dog be muzzled

***Mrs. Connelly**

Sworn In: 5:30pm

- I have pictures of the dog being walked without a leash
- My son was the picture taker
- "I saw Ms. Eddings walking the dog on 9/23/08
- "It did not have a muzzle" 4:00 and 5:30pm
 - "Walking one day on leash"
- "Leah - dog did not have a muzzle"

***Catch Connelly**

Sworn In: 5:35pm

- Taking a bike ride -- it was 11:00am
- Took a turn on Blackberry Lane
- Dog tied to tree- told Mom
- Went home and brought back video
- "I can not remember if the dog had a muzzle or not"
- Has to have a muzzle on at all times
- Can't remember if dog has muzzle

*** Mrs. Eddings**

- I saw them on 9/23/08
- I can't remember if the dog was in a muzzle
- Halloween night- dog in muzzle

***Chief Scherpa- Chief of Police**

Sworn In

- "I have heard the testimony today"
- "I certainly feel the dog should be rehomed"

***John Piepul**

Sworn In

- "I have known the dog since it came home- not a vicious dog"
- "I have seen the dog nip two or three times"
- "Nip at strangers"
- "No breaks of the skin"

***Rothenberg**

- Medical treatment sought
- Sent to plastic surgery- wound was extremely deep – plastic surgeon cut away dead and dying skin
- "Was not a nip, it was a chunk"

***Laura Eddings**

Sworn In

- "Leah has nipped people but we are responsible- muzzle must be on"
- "Leah is making a lot of progress"
- "Mom is very good"
- "Don't mean any harm"

***Renee Fye**

Sworn In

- "I take care of dog when Karen goes away"
- "Watch the dog many times"
- "I have never seen the nip"
- "Twelve times"
- "Muzzle needs to be on the dog"
- first time that "did not muzzle the dog"
- First ____ that Mrs. Eddy's ____ the dog was in Summer of 2008

***Kevin Eddings**

- "Dog sit many times"
- "Dog needs to be on leash"
- "I have been nipped by Leah"
- "1st year several times"
- "I have not seen Leah nip anyone else"
- "Exceedingly responsible person"

Meeting called at 6:35 PM

Submitted on December
11, 2008

Town of Amherst Dog Agreement: December 11, 2008

I swear under oath that Leah is not a vicious threat. I agree that Leah is sensitive/anxious to certain stimuli, such as wheels. She reacts, not attacks.

The following precautions will be taken by me and my family to prevent any more occurrences:

1. I will allow only adults familiar with Leah's sensitivity to walk her;
2. I will be sure Leah always wears a muzzle and is on a short leash with a choke collar;
3. I will not walk Leah during high bike/play areas such as Blackberry Lane and Grantwood Drive, afternoons and weekends.
4. I will take Leah for dog obedience lessons with Elise McMahon, the Animal Behaviorist, in January;
5. I will continue to desensitize Leah to stimuli such as fast moving objects along with the dog trainer;

Since I can't control what comes from behind, I can be more control of Leah by the above.

I am terribly sorry to Matthew, David and Addie. I truly apologize.

Sincerely,

Karen Eddings

Karen Eddings
84 Blackberry Lane
Amherst, MA 01002
414-519-2375



ADELAIDE MARIE CONNELLY
AGE - 8 YEARS OLD
10/21/08

9-20-08

Town of



AMHERST

Massachusetts

Office of the Town Manager
Town Hall
4 Boltwood Avenue
Amherst, MA 01002

Laurence Shaffer, Town Manager
Phone (413) 259-3002
Fax (413) 259-2405
shafferl@amherstma.gov

SELECT BOARD MEETING
December 15, 2008

Old Business

To: Stephanie O'Keeffe, Chair, Amherst Select Board
Members of the Amherst Select Board

From: Laurence Shaffer, Town Manager

Re: Dog Hearing – MGL 140, Section 157; Vicious/Nuisance Dog Statute
Karen Eddings, 84 Blackberry Lane, Amherst

Date: December 12, 2008

On Thursday, December 11, 2008, a hearing was conducted to determine the facts regarding three instances of a dog biting people. The dog, hereinafter referred to as "Leah", is owned by Karen Eddings of 84 Blackberry Lane, Amherst. On July 1, 2006, Leah bit Matthew Musante, 14 years old of 43 Blackberry Lane; on November 18, 2006, Leah bit David Rothenberg, 56 years old of 135 Iduna Lane and on September 12, 2008, Leah bit Addie Connelly, 8 years old of 154 Grantwood Drive, Amherst.

The Select Board, consistent with its authority granted by the statute, assigned the responsibility to conduct the hearing to the Town Manager by motion at its meeting of November 24, 2008. The approved motion required that the hearing be conducted and a recommendation be prepared for submittal to the Select Board prior to December 31, 2008.

The hearing began at 4:04 P.M., in the First Floor Meeting Room at Town Hall. The hearing was concluded at 6:35 P.M. The Town Manager disclosed that one of the victims, Matthew Musante, was the son of Assistant Town Manager/ Finance Director John Musante. The Town Manager recorded attendance (a copy of which is attached), and then explained the purpose and the process for the hearing. Exhibits allowed included the three police incident reports conducted relative to the three subject biting events, a picture of the bite wound received by Addie Connelly and submitted by her mother, Rachel Connelly and a document entitled "Town of Amherst Dog Agreement: December 11, 2008" signed and submitted by Karen Eddings.

Consistent with provisions of MGL 140, Section 157, testimony was taken from thirteen individuals, including the three victims. All the individuals so testifying were sworn in utilizing the oath as follows. *"Do you solemnly swear or affirm that the testimony to be given in this matter will be the truth, the whole truth and nothing but the truth."* The oath was administered to all the witnesses, to include the victims, with the right hand raised.

Each of the victims provided testimony that each was bitten by Leah on public property and each testified that no action had been taken on their individual part to provoke the dog. Matthew Musante testified that he was roller blading on Blackberry Lane on July 1, 2006 when he was bitten on the rear of his left knee. He testified that he did not provoke the dog and had not seen the dog until it was approximately 20 feet from him prior to being bitten. Mr. David Rothenberg testified that he was biking on Sacco Lane when he was attacked and bitten by a dog later identified as Leah. The attack took place on November 20, 2006. Mr. Rothenberg was treated by Ms. Eddings who told him that the "dog has a phobia." Addie Connelly, 8 years old, testified that she was bitten by Leah on September 22, 2008. Ms. Eddings was walking the dog and Addie Connelly approached on a bike and was bitten on the right leg near the ankle. Testimony was submitted by Ms. Eddings that the dog was not muzzled, as ordered by the Animal Control Officer after the Rothenberg bite.

Karen Eddings testified that she has owned Leah for three years. Ms. Eddings testified that the dog exhibited anxiety, stress and nervousness. Ms. Eddings said that she had been nipped by Leah five or six times. Ms. Eddings testified that Carol Hepburn had lectured her about muzzling the dog after the Rothenberg bite. Ms. Eddings testified that she had agreed with Ms. Hepburn to muzzle the dog. Ms. Eddings testified that the dog was not muzzled when Addie Connelly was bitten. Ms. Eddings testified that it was fair and responsible order by Ms. Hepburn to muzzle the dog. Ms. Eddings testified that "I do remember the order to muzzle the dog after the Rothenberg event."

Carol Hepburn, the Town of Amherst Animal Control Officer, testified that after the Musante bite, she told Ms. Eddings that "it would behoove you to muzzle the dog at all times" when outdoors. Ms. Hepburn testified that an order to keep the dog on a leash and muzzle and to keep the dog away from wheeled modes of transportation and "to get some help for the dog." Ms. Hepburn stated that the dog was not a vicious dog and that the dog can be trained.

Elise McMahon, an animal behaviorist, testified that she observed Leah twice and that the dog should be classified as reactive and that the dog was trainable. She also recommended that the dog be muzzled.

I would recommend that the Select Board banish Leah from the Town of Amherst and instruct the Town Manager to direct the Animal Control Officer to find a good home for Leah outside of Amherst. The testimony revealed that Ms. Eddings knew that the dog had a biting problem. The testimony revealed that Ms. Hepburn has recommended and ordered that the dog be muzzled when outside. The testimony revealed that 8 year old Addie Connelly was bitten by Leah after the order by Ms. Hepburn to have Leah muzzled at all times when outside. The dog is a threat to the neighborhood and to the community. Ms. Connelly has not complied with the Animal Control

Officer to muzzle the dog at the times it is outside. However, banishment of the dog has its own difficulties. Is it fair to the receiving municipality? Further, Ms. Eddings has apologized and has promised to live by all the conditions required by the Town Control Officer. Consequently, I would recommend that the Select Board banish the dog and to suspend the banishment until such time as evidence is submitted by the Animal Control Officer that the dog has either bitten another person or has been credibly witnessed as being outside without a muzzle on or on a leash.

Consequently, I would recommend that the Select Board adopt the following motion:

Pursuant to the provisions of MGL 140, Section 157, the town of Amherst, through its Town Manager as authorized by the Select Board, held a hearing on December 11, 2008. Thirteen witnesses, including three complainants, all of which were duly-sworn, testified. Four (4) exhibits incorporated into the decision by reference, were presented. The Select Board hereby orders the dog owned by Karen Eddings of 184 Blackberry Lane, Amherst otherwise known as "Leah" be banished from the Town of Amherst and further directs the Town Manager to instruct the Animal Control Officer to find a good home for Leah outside of Amherst. The order for banishment is suspended until such time as evidence is received by the Select Board that the dog has been outdoors without a muzzle or a leash attached.

Town of



AMHERST Massachusetts

Amherst Police Department
111 Main Street
Amherst, Massachusetts
01002

Charles L. Scherpa
Chief of Police
Business (413) 259-3000
Chief (413) 259-3014
Records (413) 259-3016
Fax (413) 259-2408
police@amherstma.gov

January 5, 2009

To: Laurence Shaffer, Town Manager and Select Board Members

From: Carol Hepburn, Animal Welfare Officer

RE: Karen Edding's Dog

The following are stipulations issued for LEAH a collie/lab/hound mix, owned by Karen Eddings who resides at 84 Blackberry Lane:

1. When out of Edding's house LEAH must be kept on a short leash, and wear a MUZZLE at all times. LEAH will not be allowed to walk on any street in Amherst until completing a six month evaluation. However, regardless of the outcome of the evaluation, LEAH will only be allowed to walk in wooded areas away from people as long as she resides in the Town of Amherst.

2. LEAH must attend at least three training sessions with Behavioral Trainer Elise McMahon of Canine Head Start, to begin soon after January 1st. After training sessions are completed, Eddings will continue to work with LEAH on her own. Following this initial training, Eddings will return to McMahon in six months to follow-up on her progress. Carol Hepburn (Animal Welfare Officer) will be present at this evaluation.

3. During this six month evaluation period LEAH will be going to work with Eddings during the day and taken to an obscure location for her daily exercise. One of these locations will be on open farmer's fields near Northfield Mountain.

4. While at home when she needs to go out for her duties, she will only use the back yard on her property, and must wear a muzzle and be on a short leash. When she is unavailable, her son Sean (who is 19) will take her out to do her duties on her property.

5. No other individual except Karen Eddings will take LEAH off the property.

6. If any of the above stipulations are violated in any way LEAH will be removed or euthanized immediately.

I, Karen Eddings, have read the above stipulations and agree to abide by them, knowing fully of the consequences that pertain to them.

Signature: Karen Eddings

Date 1/5/09

1/8/09 email
from Karen Eddings

Page 1 of 2

Seaman, Katherine

From: sjokeeffe@gmail.com on behalf of Stephanie O'Keeffe [stephanie@okeeffe.com]
Sent: Thursday, January 08, 2009 8:46 AM
To: Seaman, Katherine
Subject: Fwd: FW: Surrendering Leah

----- Forwarded message -----

From: Select Board <SelectBoard@amherstma.gov>
Date: Thu, Jan 8, 2009 at 8:33 AM
Subject: FW: Surrendering Leah
To: "Weiss, Gerald" <WeissG@amherstma.gov>, "Brewer, Alisa" <avbrewer@comcast.net>, stephanie@okeeffe.com, dstein@mtholyoke.edu, "Shaffer, Larry" <ShafferL@amherstma.gov>, "Hayden, Aaron" <aahayden@amherst.edu>

From: Weiss, Gerald
Sent: Thursday, January 08, 2009 8:33:25 AM
To: Select Board
Subject: FW: Surrendering Leah
Auto forwarded by a Rule

Gerry Weiss

Amherst Select Board

-----Original Message-----

From: Karen Eddings [mailto:kareneddings@mac.com]
Sent: Wed 1/7/2009 7:29 PM
To: Manager, Town; Weiss, Gerald; Hepburn, Carol
Subject: Surrendering Leah

Dear Larry, Gerry, Carol and remaining Select Board,

I am surrendering Leah. I have given it some thought and feel my neighbors and the community would feel safer if Leah lived out of Amherst.

I appreciate all the efforts and the hearing Monday night, but after much consideration this is best.

I feel that Leah has been rehabilitated over the years and the recent

work with the Animal Behaviorist to my and Elise's observation has been successful and she will not pose a danger to her new community. The new owner is fully aware of Leah's old behavior. The new owner knows the dog and is very comfortable with her.

I only ask that the new owners name and address not be revealed as a violation of privacy and confidentiality, aka HIPPA. The new owner requests this and this is a condition I need to honor. Carol Hepburn is aware of where the dog will be going.

If the town requests , I am sure Carol will come by to see the dog no longer lives here.

I hope this puts an end to all of the publicity and we can all move on with our lives.

This is a difficult and painful decision for my children and I to make , but we feel it is best.

By the next Select Board meeting, January 12, Leah will be gone.

Sincerely,

Karen Eddings, RN, MHN, IKYTA
Yoga/Meditation/Sound Therapy
(413) 519-2375

"If we're willing to give up hope that insecurity and pain can be exterminated, then we can have the courage to relax with the groundlessness of the situation. This is the first step on the path."

-- Pema Chodron